

## TITLE 14. DEPARTMENT OF BOATING AND WATERWAYS

### NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the California Department of Boating and Waterways (Department) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

### PROPOSED REGULATORY ACTION

The Department proposes to add Section 8100, Title 14, California Code of Regulations, relating to the selection process for private architectural, landscape architectural, engineering, environmental, land surveying, and construction management firms.

### WRITTEN COMMENTS

A written comment period has been established commencing on April 4, 2003 and terminating on May 20, 2003. Any interested person may present written comments concerning the proposed regulation no later than **5:00 p.m. on May 20, 2003**. Please submit your written comments to:

Mr. Mike Sotelo  
California Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, California, 95815  
FAX: (916) 263-0648

### PUBLIC HEARING

No public hearing on this matter has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Department at least 15 days before the end of the written comment period. Such request should be addressed to the Department contact person identified in this Notice and should specify the proposed Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying, and Construction Management Firms Regulations for which the hearing is being requested.

### AUTHORITY AND REFERENCE

This regulatory action is taken pursuant to the authority vested by Government Code Section 4526. The purpose of the proposed regulations is to implement, interpret and make specific Government Code Section 4526.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law requires the Department to adopt, by regulation, procedures that assure private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable process to public agencies. This proposal is intended to implement and make specific the Department's selection process for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. This proposal specifies the types of contracts subject to this Article. This proposal clarifies the selection criteria that may be used, what the request for qualifications shall include, and the process for selection of qualified firms and negotiation of a satisfactory contract. This proposal specifies the process for amending a contract and for contracting in phases when the Department determines it is necessary or desirable for a project to be performed in separate phases. This proposal clarifies that the Department may award a contract on the basis of competitive bids. Finally, this proposal specifies unlawful acts prohibited as part of the selection process for these contracts.

## IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. The Department has also determined that no nondiscretionary costs or savings to local agencies will result from the proposed regulatory action.

## COSTS OR SAVINGS TO STATE AGENCIES

The Department has determined that no savings or any increased costs to any State agency will result from this regulatory action.

## COSTS OR SAVINGS TO FEDERAL FUNDING TO THE STATE

The Department has determined that this regulatory action imposes no cost or savings in federal funding to the State.

## EFFECT ON HOUSING COSTS

The Department has initially determined that this regulatory action will have no effect on housing costs.

## SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made the initial determination that adoption of this proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

## IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

The Department had determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business in the State of California.

## REPORTING REQUIREMENTS

The proposed regulatory action makes no reporting requirements upon businesses.

## COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

## DETERMINATION OF EFFECT ON SMALL BUSINESSES

The Department has determined that adoption of these proposed regulations do not adversely impact small businesses. These proposed regulations serve to clarify and make specific the Department's selection process for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarify existing statutory mandates.

## CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the comment period.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons, and has available the express terms of the proposed regulatory action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the Department contact person named in this notice. The information upon which the Department relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, the Department may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If the Department does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the Department contact person named in this notice. The Department will accept written comments on any changes for 15 days after the modified text is made available.

## CONTACT PERSON

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulation, inquiries regarding the rulemaking file, and questions on the substance of the proposed regulatory action may be directed to:

Mr. Mike Sotelo  
California Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, California, 95815  
Telephone: (916) 263-0787  
FAX: (916) 263-0648

Note: In the event the contact person is unavailable, inquiries should be directed to the following substitute contact person at the same address as noted above:

David Johnson, Regulations Coordinator  
Telephone: (916) 263-0780  
djohnson@dbw.ca.gov

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on the Department's Internet Homepage <http://www.dbw.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on the Department's Internet Homepage and accessed at <http://www.dbw.ca.gov>.

**Selection Process for Private Architectural, Landscape Architectural, Engineering,  
Environmental, Land Surveying and Construction Project Management Firms**

**Proposed Regulations**

Title 14 – “Natural Resources,” Division 4 – “Department of Boating and Waterways,”  
Chapter 1 – “Department of Boating and Waterways” (California Code of Regulations  
Section 8100)

**ARTICLE 11 SELECTION PROCESS FOR PRIVATE ARCHITECTURAL,  
LANDSCAPE ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND  
SURVEYING, AND CONSTRUCTION PROJECT MANAGEMENT FIRMS**

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# **Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms**

## **Proposed Regulations**

Proposed regulatory action: Adopt Article 11 and Section 8100 in Title 14 of the California Code of Regulations.

### **Article 11 Selection Process for Private Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying and Construction Project Management Firms**

#### **8100 Purpose.**

The purpose of the selection process for private architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms is to provide procedures that assure such services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the Department of Boating and Waterways.

NOTE Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

#### **8100.1 Definitions.**

The following definitions shall be used in this article.

(a) “Architectural, landscape architectural, engineering, environmental, land surveying services” includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(b) “Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 of the Government Code for management and supervision of work performed on state construction projects.

(c) “Contract” means any agreement entered into by the Department for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) “Department” means the Department of Boating and Waterways.

(e) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, landscape

architecture, engineering, environmental services, land surveying or construction project management.

(f) “Multiple Contracts” means contracts that may be awarded to multiple firms.

(g) “On-Call Contracts” means contracts for projects that involve more than one component, site, or activity.

(h) “Single Firm Contract” means a contract that is let to the single most qualified firm.

(i) “Small Business” is a firm that meets the definition of “small business” provided in Government Code Section 14837.

(j) “Specific Project Contract” is a contract for a project that involves a single subject matter and may result in a single contract.

NOTE Authority cited: Section 4526, Government Code. Reference: Sections 4525, 4526, and 14837 Government Code.

## **8100.2 Contract Types.**

(a) The Department may utilize specific project contracts, single firm contracts, multiple contracts, or on-call contracts depending on the specific situation. All contract types are subject to this Article.

(b) Multiple contracts may be awarded for contracts that cover different, specific geographic regions; contracts that encompass different specific, unique disciplines; or contracts for which there would be a primary contractor, with a substitute contractor in the event the primary contractor is unavailable for the assignment.

NOTE Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 4526, Government Code.

## **8100.3 Selection Criteria.**

The Department shall establish selection criteria that will comprise the basis for the selection of eligible firms to perform the required services. The criteria may include such factors as professional experience of the firm in performing services of similar nature; quality and relevance of recently completed or ongoing work; reliability, continuity, and location of firm to the project site; staffing capability; education and experience of key personnel to be assigned; knowledge of applicable regulations and technology associated with the services required; specialized experience of the firm in the services to be performed; participation as a small business firm; and other factors the Department deems relevant to the specific task to be performed.



The Department may weigh these factors according to the nature of the proposed project, the complexity and special requirements of the specific services, and the needs of the Department.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526, 4527 and 4529.5, Government Code.

#### **8100.4 Request for Qualifications.**

(a) A statewide announcement of each proposed project shall be published in the California State Contracts Register, in accordance with the Government Code (commencing with Section 14825), and in the publications of the respective professional societies. Failure of any professional society to publish the announcement shall not invalidate any contract.

(b) The announcement for each proposed project shall include, at a minimum, a brief description of the services required, location and duration of services, criteria upon which the award will be made, submittal requirements, contact person for the Department, and the final response date for receipt of statements from firms of their demonstrated competence and professional qualifications.

(c) The Department shall identify potentially qualified small business firms who might be interested in contracting with the Department, and shall provide copies of project announcements to those small business firms that have indicated an interest in receiving the announcements. Failure of the Department to send a copy of an announcement to any firm shall not invalidate any contract.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, 4527 and 14825, Government Code.

#### **8100.5 Annual Submission of Qualifications.**

The Department may accept qualifications and performance data from interested firms throughout the year and may consider such qualifications and performance data when selecting a contractor in accordance with Section 8100.6. The Department may establish the formats for submittal of qualifications and performance data to the Department.

NOTE: Authority cited: Section 4527, Government Code. Reference: Sections 4527, Government Code.

#### **8100.6 Selection of Qualified Firms.**

(a) After the expiration of the final response date in the published project announcement, the Department shall review and evaluate the written statements of demonstrated competence and professional qualifications using the selection criteria in the published project announcement, and rank, in order of preference, the firms determined as most highly qualified to perform the required services.

(b) The Department shall conduct discussions with at least the three most eligible firms, or a lesser number if fewer than three eligible firms have responded, about anticipated concepts and the benefit of alternative methods for furnishing the required services. From the firms with which discussions are held, the Department shall select, in order of preference, not fewer than three firms, or a lesser number if fewer than three eligible firms responded, deemed to be the most highly qualified to perform the required services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 4527, Government Code.

#### **8100.7           Negotiation.**

(a) From among the firms selected in Section 8100.6, as most highly qualified to perform the services required, the Department shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable.

(b) If the Department is unable to negotiate a satisfactory contract with the best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the second best qualified firm. If unable to negotiate a satisfactory contract with the second best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated and negotiations undertaken with the third best qualified firm. If unable to negotiate a satisfactory contract with the third best qualified firm at a compensation which the Department determines is fair and reasonable, negotiations with that firm shall be terminated.

(c) Where the Department is unable to negotiate a satisfactory contract in accordance with subsections (a) and (b), the Department shall continue the negotiations process with the remaining qualified firms, if any, in order of preference, until a satisfactory contract is reached. If unable to negotiate a satisfactory contract with any of the qualified firms, the Department shall abandon the negotiation process for the required services.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4527 and 4528, Government Code.

#### **8100.8           Estimated Value of Services.**

(a) Before entering into discussion with any firm selected pursuant to Section 8100.6, Department staff shall prepare an estimate of the value of the proposed contract, based upon accepted rates for comparable services. The estimate will serve as a guide in determining fair and reasonable compensation in the negotiation of a satisfactory contract in accordance with the provisions of Section 8100.7, and shall not be disclosed until award of the contract or abandonment of the negotiation process for the services to which it relates.

(b) At any time the Department determines the estimate prepared in accordance with (a) to be unrealistic for any reason, the Department shall reevaluate the estimate and, if necessary, modify the estimate.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

#### **8100.9            Amendments.**

Where the Department determines that a change in the contract is necessary during the performance of the services, the parties may, by mutual consent, in writing, agree to modifications, additions or deletions in the general terms, conditions and specifications for the services involved, with a reasonable adjustment in the firm's compensation.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4527 and 4528, Government Code.

#### **8100.10          Contracting in Phases.**

Where the Department determines it is necessary or desirable for a project to be performed in separate phases, the Department may negotiate a partial compensation for the initial phase of the services required, provided, however, the Department first determines that the firm selected is best qualified to perform the entire project. The contract shall include a provision that the Department may, at its option, utilize the firm to perform other phases of the services at a compensation which the Department determines is fair and reasonable, to be later negotiated and included in a mutual written agreement. In the event that the Department exercises its option under the contract to utilize the firm to perform other phases of the project, the procedures of Sections 8100.7 and 8100.8, regarding estimates of value of services and negotiation shall be followed.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526 and 4528, Government Code.

#### **8100.11          Department's Power to Require Bids.**

If the Department determines that the services are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract may be awarded on the basis of competitive bids and not the procedures of this Article.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4529, Government Code.

#### **8100.12          Unlawful Considerations.**

Each contract shall include a provision by which the firm warrants that the contract was not obtained or secured through rebates, kickbacks or other unlawful considerations either promised or paid to any Department employee. Failure to adhere to this warranty

may be cause for contract termination and recovery of damages under the rights and remedies due the Department under the default provision of the contract.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, Government Code.

### **8100.13        Prohibited Relationships.**

No Department employee who participates in the evaluation or selection process leading to award of a contract shall have a relationship with any of the firms seeking that contract, if that relationship is subject to the prohibition of Government Code Section 87100.

NOTE: Authority cited: Section 4526, Government Code. References: Sections 4526, 87100 and 87102, Government Code.

## **TITLE 14. NATURAL RESOURCES**

### **DIVISION 4. DEPARTMENT OF BOATING AND WATERWAYS**

#### **CHAPTER 1. DEPARTMENT OF BOATING AND WATERWAYS**

##### **ARTICLE 11. SELECTION PROCESS FOR PRIVATE ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND SURVEYING, AND CONSTRUCTION PROJECT MANAGEMENT FIRMS**

###### **Initial Statement of Reasons**

###### **Description of the Public Problem, Administrative Requirements, and Other Conditions and Circumstances these Regulations are Intended to Address:**

Each state agency is required to develop their own regulations for selection of private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms pursuant to Government Code Section 4525 et seq. and Public Contract Code Section 6106. This regulation package adopts Section 8100, Title 14, California Code of Regulations (CCR) to implement, interpret, and make specific the Department of Boating and Waterway's (Department) selection and award process for architectural and engineering contracts.

The Department is authorized by the Harbors and Navigation Code to plan and develop boating facilities on State-managed properties that enhance recreational boating and navigation. These Department Capital Outlay projects are subject to approval of the legislature, and are predicated on funding availability, cost effectiveness, and environmental soundness of work. Under the Capital Outlay Program, the Department participates in the planning, design, and construction of new facilities or in the renovation or rehabilitation of outdated project features that have reached or exceeded their normal life cycle. The program activities encompass more than 25 boat launching sites at 13 major State Water Project reservoirs and lakes; and 49 boat launching sites and 4 minimarinas at 33 State Parks. The Department also partners in boating facilities improvements at numerous other State-managed recreational boating sites.

Capital Outlay projects typically consist of:

- Boat launching ramps, hoists, or specialty launch devices
- Boat slips and anchorage
- Parking areas, sanitary facilities, and related utilities
- Boat boarding floats, docks, and shore access floats
- Boating Instruction and Safety Centers.

To accomplish work, the Department has assembled a team of engineers, landscape architects, and a support staff who are experienced in recreational waterfront facilities planning, design and construction. The Department occasionally enters into contracts with private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms for these services. The objective of developing these regulations is to provide a framework within which the Department can select and award contracts to such firms.

Specific Purpose and Rationale for Necessity:

The specific purpose and rationale for each section is discussed below:

Section 8100. “Purpose.”

**Specific Purpose:** This section describes the overall purpose of the selection process for services provided by private architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms.

**Rationale for Necessity:** Government Code Section 4526 requires that the regulatory procedures for these services assure such services are engaged on the basis of demonstrated competence and qualifications to be performed, at fair and reasonable prices to the Department. This section is necessary to clarify that the procedures contained in these regulations meet the requirements of Government Code Section 4526.

Section 8100.1. “Definitions.”

**Specific Purpose:** The provisions of this section establish definitions for the terms used throughout these regulations.

**Rationale for Necessity:** The definitions are necessary to ensure that the terminology in the proposed regulations is consistent and understandable by entities that are affected by these regulations.

Subsection (a) defines the term “architectural, landscape architectural, engineering, environmental, land surveying services” which are the subject of these regulations. This definition is duplicative of Government Code Section 4525(d) and is repeated here for clarity and ease of reference for interested parties.

Subsection (b) defines the term “construction project management services” which are the subject of these regulations. This definition is duplicative of Government Code Section 4525(e) and is repeated here for clarity and ease of reference for interested parties.

Subsection (c) defines the use of the term “contract” for purposes of these regulations. This definition is necessary to identify the scope of what is deemed a contract under these regulations.

Subsection (d) defines the term “Department” for purposes of these regulations. This definition is necessary to avoid replication of the full department name throughout these regulations.

Subsection (e) defines the term “firm” as used in these regulations. This definition is duplicative of Government Code Section 4525(a) and is repeated here for clarity and ease of reference for interested parties.

Subsection (f) defines the term “multiple contracts” as used in section 8100.2. This definition is necessary to clarify what contract types are available for use by the Department for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

Subsection (g) defines the term “on-call contracts” as used in section 8100.2. This definition is necessary to clarify what contract types are available for use by the Department for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

Subsection (h) defines the term “single firm contract” as used in section 8100.2. This definition is necessary to clarify what contract types are available for use by the Department for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

Subsection (i) defines the term “small business.” This definition is necessary to clarify and reference the definition of small business in Government Code Section 14837.

Subsection (j) defines the term “specific project contract” as used in section 8100.2. This definition is necessary to clarify what contract types are available for use by the Department for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

#### Section 8100.2 “Contract Types.”

**Specific Purpose:** This section describes the different types of contracts available for use by the Department.

**Rationale for Necessity:** This section specifies the different types of contracts the Department may use for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. This section is consistent with

Chapter 11 of the *State Contracting Manual* regarding types of projects for architectural and engineering contracts. Subsection (a) is necessary to clarify that the various contract types are subject to the requirements of these regulations. Subsection (b) is necessary to clarify the circumstances under which multiple contracts may be used.

#### Section 8100.3 “Selection Criteria.”

**Specific Purpose:** This section identifies various criteria the Department may utilize in selecting private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms.

**Rationale for Necessity:** The Department is required by Government Code Section 4526 to assure that contracts for private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed. This section specifies the criteria the Department may use in the selection process to ensure compliance with Government Code Section 4526. In addition, two state agencies have adopted regulations for such contracts that meet these criteria. The specific language of this section is modeled after the selection criteria adopted by the Department of Parks and Recreation in Section 4726 of the California Code of Regulations and by the Department of Fish and Game in Section 789.1 of the California Code of Regulations. Finally, Chapter 11 of the *State Contracting Manual* provides guidance as to criteria to include in the selection process and this section incorporates those criteria.

This section specifies that the Department shall establish selection criteria that will comprise the basis for the selection of firms. This is necessary to clarify to interested parties that the Department will develop the selection criteria. Professional experience performing similar services is included because it demonstrates relevant competence. Quality and relevance of recently completed or ongoing work also shows competence for the types of services to be performed. Reliability, continuity, and location of firm to the project site provide an indication of a firm’s ability to complete the project, as does staffing capability. Education and experience of key personnel demonstrates competence and qualification for the types of services to be performed. Knowledge of applicable regulations and technology demonstrates competence related to the required services. Specialized experience also demonstrates competence and qualifications for the types of services to be performed. Maximum participation of small business firms is required pursuant to the California Government Code Section 4526. Finally, the Department may identify and include other factors specific to the project that assure the services are engaged on the basis of demonstrated competence and qualifications.

This section also specifies that the Department may assign weights to these factors. Weighting of factors is necessary for the Department to select firms on the basis of demonstrated



competence and qualifications for the project. The *State Contracting Manual* also indicates that the factors shall be weighted.

Section 8100.4 “Request for Qualifications.”

**Specific Purpose:** This section describes the Department’s process for solicitation of firms to bid on proposed projects.

**Rationale for Necessity:** Each agency is required to develop regulations for the selection of private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms pursuant to Government Code Section 4525 et seq. and Public Contract Code Section 6106. Part of the selection process includes solicitation of firms. This section specifies and informs interested parties of the solicitation process used by the Department for such contracts. Sections 4727 and 789.2 of the California Code of Regulations apply to these types of services for the Department of Parks and Recreation and Department of Fish and Game, respectively, and this section is modeled after these two sections.

Subsection (a) informs interested parties that all solicitations shall be advertised in the California State Contracts Register and in publications of respective professional societies. Chapter 11 of the *State Contracting Manual* requires these projects to be published in the California State Contracts Register and in publications of the respective professional societies. Government Code Section 4527 requires statewide announcement of all projects of this type through publications of respective professional societies.

Subsection (b) informs interested parties what the announcement will include, at a minimum. A description of the services is required to allow prospective firms to decide whether they have an interest in performing the services being requested. The location and duration of services is necessary in order to allow prospective firms to decide if they are able to perform the required services at the location during the time period. The selection criteria is necessary in order for prospective firms to decide whether they want to respond to the solicitation as well as to ensure a fair and competitive bidding process. Submittal requirements are necessary to allow interested firms to prepare their bid for the services. The Department’s contact person is necessary so interested parties have a contact at the Department to inquire about the solicitation. The final response date is necessary so that interested firms can submit their bids for the Department to evaluate.

Subsection (c) specifies that the Department’s contracting process guarantees maximum small business participation per Government Code Section 4526. This subsection also clarifies that contracts shall not be invalid solely because a firm does not receive an announcement.

Section 8100.5 “Annual Submission of Qualifications.”

**Specific Purpose:** This section specifies that the Department may accept qualifications from interested firms throughout the year and develop formats for such submissions.

**Rationale for Necessity:** Government Code Section 4527 allows departments to encourage private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms to annually submit a statement of their qualifications. This section specifies the Department’s process for accepting such qualifications. This section also specifies that the Department may establish the format for such submittals in order to receive consistent information from all firms that can be used to evaluate potential contractors.

Section 8100.6 “Selection of Qualified Firms.”

**Specific Purpose:** This section specifies the Department’s procedures for selecting the firms that demonstrate competence and qualifications for the project to be performed.

**Rationale for Necessity:** Government Code Section 4527(a) requires the Department to evaluate qualifications and performance data submitted in response to the solicitation as well as information on file with the Department. Sections 4728 and 789.3 of the California Code of Regulations contain the selection processes for the Department of Parks and Recreation and the Department of Fish and Game, respectively. This section is modeled after these existing regulations.

Subsection (a) specifies that the Department shall evaluate and review each firm’s qualifications and rank the firms in order of those most highly qualified to perform the services. The Department needs to rank firms in order to ensure the contracting process results in the selection of one of the most highly qualified firms.

Government Code Section 4527(a) requires the Department to conduct discussions with no less than three firms and then select, in order of preference, at least three firms deemed to be the most highly qualified. Subsection (b) specifies that the Department shall conduct discussions with at least the three most highly qualified firms in order for the Department to better understand each firm’s concepts for the project. Subsection (b) also specifies that the Department shall select no fewer than three firms deemed to be the most highly qualified. This is necessary to comply with Government Code Section 4527(a).

Section 8100.7 “Negotiation.”

**Specific Purpose:** This section specifies the negotiation process used by the Department to negotiate a satisfactory contract with the best qualified firm.

**Rationale for Necessity:** Government Code Section 4528(a)(1) requires the Department to negotiate a contract with the best qualified firm at a compensation that the Department determines is fair and reasonable. Government Code Sections 4528(a)(2) and 4528(a)(3) outline the selection process when the Department cannot reach agreement with the best qualified firm. Sections 4731 and 789.3(b) of the California Code of Regulations contain the negotiation processes for the Department of Parks and Recreation and the Department of Fish and Game, respectively. This section is modeled after these existing regulations.

Subsection (a) specifies that the Department shall attempt to negotiate a satisfactory contract with the best qualified firm at a compensation that the Department determines is fair and reasonable. This is necessary to comply with Government Code Section 4528(a)(1).

Subsection (b) specifies that the Department shall negotiate with the second most qualified firm if a satisfactory contract cannot be negotiated with the most qualified firm, and that the Department shall negotiate with the third most qualified firm if a satisfactory contract cannot be negotiated with the second most qualified firm. This is necessary to comply with Government Code Section 4528(a)(2).

Subsection (c) specifies that the negotiation process shall continue with remaining qualified firms until a satisfactory contract is reached. If the Department cannot negotiate a satisfactory contract with any of the qualified firms, the Department shall abandon the negotiation process for the required services. This is necessary to comply with Government Code Section 4528(a)(3).

#### Section 8100.8 “Estimated Value of Services.”

**Specific Purpose:** This section requires the Department to prepare an estimate of the value of the proposed contract to use as a guide in determining fair and reasonable compensation.

**Rationale for Necessity:** Government Code Section 4526 requires contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services to be at fair and reasonable prices to public agencies. Government Code Section 4528(a) requires that these services be at compensation that the Department determines is fair and reasonable to the State of California. Section 4729 of the California Code of Regulations contains the valuation of services process for the Department of Parks and Recreation. This section is modeled after this existing regulation.

Subsection (a) specifies that the Department shall develop an estimate of the value of the proposed contract, based upon accepted rates for comparable services. Accepted rates for comparable services provide some level of assurance that the price the Department is paying is comparable to existing market rates. Subsection (a) also specifies that this estimate will serve as

a guide in determining fair and reasonable compensation. This is necessary to comply with Government Code Sections 4526 and 4528(a). Subsection (a) specifies that the estimate shall not be disclosed until award of the contract or abandonment of the negotiation process. This is necessary to ensure negotiations between the Department and potential contractor are conducted in good faith and without bias.

Subsection (b) specifies that the Department may, at any time, reevaluate and/or modify the estimate if the Department determines the estimate is no longer realistic. This is necessary to comply with Government Code Sections 4526 and 4528(a) that the compensation is fair and reasonable.

#### Section 8100.9 “Amendments.”

**Specific Purpose:** This section describes the process for amending a contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

**Rationale for Necessity:** The Department needs the ability to amend contracts when conditions or circumstances change. This section specifies that the Department and contractor may amend or modify the contract upon mutual consent by both parties. California Code of Regulations Sections 4732 and 789.5 contain the contract amendment processes for the Department of Parks and Recreation and Department of Fish and Game, respectively, and this section is modeled after these two sections.

#### Section 8100.10 “Contracting in Phases.”

**Specific Purpose:** This section describes the Department’s process for contracting in separate phases when the Department determines it is necessary or desirable to do so.

**Rationale for Necessity:** The specific scope and magnitude of some projects is not known when the Department initially requests services. This section allows the Department to contract for such projects in phases. Sections 4733 and 789.6 of the California Code of Regulations contain the same processes for the Department of Parks and Recreation and Department of Fish and Game, respectively, and this section is modeled after these two sections.

This section specifies that the Department may negotiate a partial compensation for the initial phase of services required when the Department determines it is necessary or desirable for a project to be performed in separate phases. This is necessary to provide the Department the authority to contract for complex projects one phase at a time rather than committing resources without knowing the scope of services required. This section also requires the Department to

first determine that the firm selected is best qualified to perform the entire project. This provides continuity on multi-phased projects.

This section specifies that the contract contain a provision that allows the Department to utilize the firm to perform other phases of the services at fair and reasonable compensation. This allows the Department to more accurately contract for future phases of services. This section specifies that the other phases shall be negotiated and included in a written agreement. This assures the firm and the Department agree to the scope and compensation of future phases of services.

This section specifies that the Department shall follow other sections of this article regarding estimates of value of services and negotiation. This is necessary to ensure that contracts for the future phases comply with Government Code Sections 4526 and 4528(a).

#### Section 8100.11 “Department’s Power to Require Bids.”

**Specific Purpose:** This section allows the Department to competitively bid projects if necessary.

**Rationale for Necessity:** Government Code Section 4529 provides the Department the authority to require bids when the services are more of a technical nature and involve little professional judgment. This section specifies this authority to the Department, and is necessary to comply with Government Code Section 4529. California Code of Regulations Section 4734 provides the same authority to the Department of Parks and Recreation, and this section is modeled after this regulation.

#### Section 8100.12 “Unlawful Considerations.”

**Specific Purpose:** This section requires each contract to include a provision by which the firm warrants that the contract was not obtained through rebates, kickbacks or other unlawful considerations.

**Rationale for Necessity:** Government Code Section 4527(b) requires the Department’s procedures to specifically prohibit practices that might result in unlawful activities. Sections 4735 and 789.4 of the California Code of Regulations contain the same requirement for the Department of Parks and Recreation and Department of Fish and Game, respectively, and this section is modeled after these two sections.

This section specifies that the Department include in each contract a provision by which the firm warrants that the contract was not obtained or secured through rebates, kickbacks or other unlawful considerations. This is necessary to ensure the contract is awarded on the basis of demonstrated competence and qualifications, as required by Government Code Section 4526. This section also specifies that failure to include this provision may be cause for termination of

the contract and recovery of damages. This is necessary to provide the Department the authority to terminate a contract that wasn't awarded in compliance with Government Code Section 4525 et seq.

Section 8100.13 "Prohibited Relationships."

**Specific Purpose:** This section prohibits relationships between Department employees involved in the contract selection process and any of the firms seeking the contract.

**Rationale for Necessity:** Government Code Section 4527(b) requires the Department's procedures to specifically prohibit employees from participating in the selection process when they have a relationship with a person or business entity seeking a contract. Sections 4736 and 789.4 of the California Code of Regulations contain this same requirement for the Department of Parks and Recreation and Department of Fish and Game, respectively. This section is modeled after these two sections.

This section specifies that no Department employee who participates in the contract selection process shall have a relationship with any of the firms seeking the contract. This is necessary to ensure the contract is awarded on the basis of demonstrated competence and qualifications, as required by Government Code Section 4526, and that no conflict of interest exists in the contract selection process.